

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE TRANSPARENCY PROJECT,	§	
	§	
Plaintiff,	§	CIVIL ACTION No. 4:20CV467
	§	
v.	§	
	§	
U.S. DEPARTMENT OF JUSTICE, et al.,	§	JUDGE SEAN D. JORDAN
	§	
Defendants.	§	

**DEFENDANTS' ORIGINAL ANSWER
AND AFFIRMATIVE DEFENSES**

Defendants, the United States Department of Justice (“DOJ”), the National Security Agency (“NSA”), the Federal Bureau of Investigation (“FBI”), the Central Intelligence Agency (“CIA”) and the Office of the Director of National Intelligence (“ODNI”), hereby answer the numbered paragraphs of the First Amended Complaint filed by Plaintiff, The Transparency Project,. (ECF No. 5), as follows:

**I.
JURISDICTION AND VENUE**

1. This paragraph contains Plaintiff’s conclusions of law regarding jurisdiction, to which no response is required.
2. This paragraph contains Plaintiff’s conclusions of law regarding venue, to which no response is required.

II. **PARTIES**

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

4. Defendant DOJ admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

5. Defendant NSA admits the allegations in the first sentence. The second sentence consists of Plaintiff's legal conclusions, to which no response is necessary. The third sentence correctly states Defendant NSA's address, but erroneously attributes it to another Defendant, DOJ.

6. Defendant FBI admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

7. Defendant CIA admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

8. Defendant ODNI admits the first sentence of this paragraph. The second sentence consists of legal conclusions to which no response is required. Defendant ODNI denies the allegations in the third sentence and avers that it is headquartered in Virginia.

III. STATEMENT OF FACTS

9. Defendants admit that Plaintiff submitted a Freedom of Information Act (“FOIA”) request dated October 26, 2018 to various components of DOJ. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and denies any allegations inconsistent with it. Defendant DOJ avers that the Office of Information Policy (“OIP”) acknowledged receipt of this request on behalf of the Offices of the Attorney General (“OAG”) and Legislative Affairs (“OLA”) by letter dated November 27, 2018.¹ Defendant DOJ avers that the Criminal Division (“CRM”) acknowledged receipt of this request by letter dated November 9, 2018, and further informed Plaintiff that the request was misdirected to CRM and was being administratively closed. Defendant DOJ avers that the National Security Division (“NSD”) did not receive this request until litigation commenced. Defendant DOJ avers that the Executive Office for United States Attorneys (“EOUSA”) acknowledged receipt of this request by letter through the FOIAOnline system on November 2, 2018.

10. Defendant NSA admits that it received a FOIA request from Plaintiff dated October 29, 2018, and respectfully refers the Court to Plaintiff’s FOIA request for its accurate and complete contents. Defendant NSA denies that it has not responded to the request in any way, and respectfully refers the Court to NSA’s acknowledgement letter dated October 31, 2018, for its accurate and complete contents.

¹ OIP’s Initial Request Staff is responsible for processing FOIA requests for records within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), and the Associate Attorney General (OASG), and the Offices of Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO).

11. Defendant CIA admits that it received a FOIA request from Plaintiff dated May 28, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant CIA avers that it acknowledged receipt of this request by letter dated June 15, 2020. Defendant CIA also admits that as of the date of this complaint, it had not yet produced records to Plaintiff.

12. Defendant ODNI admits that it received a FOIA request from Plaintiff, but avers that it was dated June 11, 2020, not June 5, 2020. Defendant ODNI also admits that as of the date of the complaint, it had not yet produced records to Plaintiff. The remainder of this paragraph consists of Plaintiff's characterization of the contents of the request. Defendant ODNI respectfully refers the Court to the request for a complete and accurate statement of its contents.

13. Defendant FBI admits that it received a FOIA request from Plaintiff dated June 11, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant FBI also admits that as of the date of this complaint, it had not yet produced records to Plaintiff.

14. Defendants admit that Plaintiff submitted a FOIA request addressed to six components of DOJ and dated June 11, 2020 to the Department's Mail Referral Unit, which then forwarded Plaintiff's FOIA request to OIP, NSD, EOUSA, CRM², and FBI. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and denies any allegations inconsistent with it. Defendant DOJ

² Plaintiff also emailed the request directly to CRM.

avers that, by letter dated July 21, 2020, OIP issued a final response to Plaintiff's request. Defendant FBI admits that as of the date of this complaint, it had not yet produced records to Plaintiff. Defendant DOJ avers that NSD acknowledged Plaintiff's request by email dated September 2, 2020, and further informed Plaintiff that due to the COVID-19 public health emergency, FOIA processing would be slower than normal. NSD also asked Plaintiff for further clarity because NSD does not maintain FBI records. Defendant DOJ avers that, by letter dated August 25, 2020, CRM issued a no records final response, which Plaintiff did not administratively appeal. Defendant DOJ admits that as of the date of this complaint, EOUSA has not yet produced records to Plaintiff.

15. Defendant NSA admits that it received a FOIA request from Plaintiff dated June 12, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant NSA received this request on June 15, 2020. Defendant NSA admits that no responsive documents were provided as of the date of the Complaint.

16. Defendant FBI admits that it received a FOIA request from Plaintiff dated June 12, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant FBI also admits that as of the date of this complaint, it had not yet produced records to Plaintiff. Defendant DOJ admits that NSD received a FOIA request from Plaintiff dated June 15, 2020. Defendant DOJ also admits that as of the date of this complaint, NSD had not yet produced records to Plaintiff.

17. Defendant FBI admits that it received a FOIA request from Plaintiff dated June 18, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its

accurate and complete contents. Defendant FBI also admits that as of the date of this complaint, it had not yet produced records to Plaintiff. Defendant CIA admits that it received a FOIA request from Plaintiff dated June 18, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant CIA also admits that as of the date of this complaint, it had not yet produced records to Plaintiff. Defendant NSA denies that it received a FOIA request dated June 18, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents. Defendant DOJ denies that it received a FOIA request dated June 18, 2020, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents.

18. Defendants request that this paragraph, which sets forth Plaintiff's speculation, opinions, and other matters wholly unrelated to the FOIA requests that are the subject of this action and does not comply with FED. R. CIV. P. 8(a), be struck pursuant to FED. R. CIV. P. 12(f). Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations.

IV. **COUNT I**

19. Defendants incorporate by reference their responses to ¶¶ 1 through 18 as though set forth in full herein.

20. This paragraph sets forth conclusions of law to which no response is necessary.

V.
REQUEST FOR RELIEF

This paragraph sets forth Plaintiff's request for relief to which no response is necessary. To the extent that any portion of this paragraph is deemed to contain an allegation of fact or a response is deemed necessary, Defendants deny those allegations.

AFFIRMATIVE DEFENSES

1. Plaintiff is not entitled to compel the production of records or information exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).
2. Plaintiff is not entitled to remedies beyond what is provided for in the FOIA. *See* 5. U.S.C. § 552.
3. Plaintiff has failed to properly exhaust administrative remedies.

Respectfully submitted,

STEPHEN J. COX
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2020, a true and correct copy of the foregoing *Defendants' Original Answer and Affirmative Defenses* has been sent to counsel of record via the court's electronic filing system.

/s/ Andrea L. Parker
ANDREA L. PARKER
Assistant United States Attorney